



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Cybernated Controls Corporation

File: B-230309.3

Date: May 20, 1988

DIGEST

Protester's objections to the qualifications of a proposed awardee under a small business set-aside and to its intention to subcontract all of the work are not for General Accounting Office (GAO) review because they constitute a challenge to (1) the proposed awardee's responsibility which GAO generally does not review (2) the firm's small business size status, which is a matter for the Small Business Administration.

DECISION

Cybernated Controls Corporation protests the proposed award of a contract to Applied Retrieval Technology, Inc., under request for proposals (RFP) No. N00600-88-R-1135, issued as a small business set-aside by the United States Navy for the maintenance of certain storage and retrieval equipment. The protester alleges that Applied Retrieval is not qualified to perform the contract with its own resources.

We dismiss the protest.

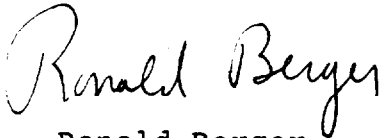
The protester generally contends that Applied Retrieval lacks experience and that the firm did not have a full-time field technical staff on its payroll as of the date it had been selected as the proposed awardee. Cybernated further maintains that it has been informed that Applied Retrieval plans to subcontract 100 percent of the work called for by the RFP to another firm which the protester alleges is a large business.

The Small Business Act requires that to be eligible to participate in a set-aside for a service contract (except construction), a small business firm must expend at least 50 percent of the cost of the contract performance incurred for personnel for employees of the small business contractor. 15 U.S.C.A. § 644(o)(1) (West Supp. 1988); Kettenberg Marine Corp., B-230628, Mar. 23, 1988, 88-1 CPD ¶ 303. The

protester's questions regarding Applied Retrieval's proposed compliance with this requirement have been referred by the Navy to the Small Business Administration (SBA) as a size status challenge. Since according to the agency it did not prohibit subcontracting under this solicitation, to the extent the protester objects to the awardee's subcontracting plans the protest concerns the size status of Applied Retrieval and was properly referred to SBA. As the SBA is empowered to determine size status matters, we will not consider this issue. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(2) (1988); Environmental Technology Corp., B-225479.3, June 18, 1987, 87-1 CPD ¶ 610.

The remainder of the protest appears to constitute a challenge to Applied Retrieval's ability to perform the contract. Thus, the complaint concerns the firm's responsibility. We will not review an agency's affirmative responsibility determination absent a showing of possible fraud bad faith or that definitive responsibility criteria will not be met. 4 C.F.R. § 21.3(m)(5); Environmental Technology Corp., B-225479.3, supra. No such contentions have been raised here.

The protest is dismissed.



Ronald Berger
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General Counsel